

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(Amendment)

911 KAR 2:180 Kentucky Early Intervention Program Mediation and Surrogate Parents

RELATES TO: 20 U.S.C 1471-1485; 34 CFR 303 and KRS 200.672

STATUTORY AUTHORITY: KRS 194a.050, 200.650-676

NECESSITY, FUNCTION AND COMFORMITY: KRS 200.650 to 200.676 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions of mediation used in First Steps, Kentucky's Early Intervention System.

Section 1. Mediation.

(1) Mediation shall be adopted as an option to resolve complaints;

(2) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;

(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;

(4) The time table for the mediation process shall be:

(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;

(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;

(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation;

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(5) Mediation resolutions may not conflict with state and federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;

(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;

(7) Mediators shall be trained in First Steps policies and procedures.

Section 2 Surrogate Parents

A POE/LLA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

(1) (a) No individual can be identified as a parent as defined in 911 KAR 2:100 (23);

(2) (b) A POE/LLA, after reasonable efforts, cannot discover the whereabouts of the parents;

(3) (c) The child is a ward of the state; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney Vento Homeless Assistance Act, 42 U.S.C. 11431.

(4) The POE/LLA shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) A POE/LLA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part C of IDEA, 34 C.F.R. Part 303, and KRS 200.672, to make decisions about educational issues for a child.

(6) A POE/LLA shall have a procedure for selecting surrogates. A surrogate:

(a) Shall not be an employee of the State Lead Agency for Part C, the POE/LLA, or an individual or employee of an agency providing early intervention services to the child or to any family member of the child;

(b) Shall not have any personal or professional interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(7) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and

street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed above until a surrogate parent can be appointed that meets all the requirements of this section.

(8) A POE/LLA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the POE/LLA that the child needs a surrogate.

(9) The surrogate parent may represent the child in all matters relating to

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSP, including annual evaluations and periodic reviews; and

(c) The ongoing provision of early intervention services to the child

